HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1050 OF 2006

Between:

Naval Civilian Employees Union,
Visakhapatnam,
Affiliated to All India Defence Employees
Federation, Pune,
Rep. by its General Secretary,
G.S.J. Atchuta Rao, Visakhapatnam.

..... Appellant

AND

Naval Civilian Employees Union,
Visakhapatnam,
Rep. by its General Secretary
Sri B. Anjaneyulu & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri A. K. Jayaprakash Rao

Counsel for respondent No.1 : Shri G. Vidya Sagar

Counsel for respondent Nos.2 and 3 : Shri A. Rajasekhar Reddy Assistant Solicitor General

Dated: 20.11.2006

Per G.S.SINGHVI, C.J.

This appeal is directed against order dated 13-9-2006 passed by the learned Single Judge in WPMP.No.23834 of 2006 (Writ Petition No.18957 of 2006).

We have heard learned counsel for the parties and perused the record.

In the writ petition filed by it, respondent No.1 has made the following substantive prayer:

> "It is, therefore, prayed that pending disposal of the writ petition, the Hon'ble Court may be pleased to direct the respondents to permit the nominee of the petitioner union to submit the agenda points, participate in the JCM – IV level Steering Committee Meeting scheduled to be held on 21-9-2006 or on any other subsequent date and pass such other order or orders in the interest of justice.
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> It is, therefore, prayed that the Hon'ble Court may be pleased to issue an order, direction or writ particularly one in the nature of writ of mandamus or any other appropriate writ (1) declaring the action of the respondents in not inviting the members of the petitioner union to the meetings of JCM-IV is illegal and arbitrary (ii) declare that the nominee members of the petitioner union are also entitled to participate in the meeting scheduled to be held on 21-9-2006 in terms of letter No.LR/6357/JCM-IV/SC(5)/2005/07/1, dated 8-9-2006 and permit the nominated members of the petitioner to represent and submit their points till the expiry of term 2005-07 and pass other order or orders in the interest of justice."

The above reproduced prayer of respondent No.1 is founded on the assertion that in spite of the clarification given by Deputy Commissioner of Labour, Visakhapatnam vide proceedings dated 14-6-2006, the management of Eastern Naval Command, Visakhapatnam is not inviting its representatives in the JCM-IV Level Steering Committee Meetings. Along with the writ petition, respondent No.1 filed WPMP.No.23834 of 2006 for issue of an interim direction to the non-petitioners (respondent Nos.2 and 3 herein) to permit nominee members of the union to submit the agenda points and participate in the JCM-IV Level Steering Committee Meeting scheduled to be held on 21-9-2006.

While issuing notice of the writ petition, the learned Single Judge passed the impugned order, which reads as under:

> "Pending further orders, there shall be a direction to the first respondent to take the necessary steps in terms of the directions of the Deputy Commissioner of Labour, Visakhapatnam vide letter dated 14-6-2006."

Before proceeding further, we deem it proper to mentin that after receiving notice of the writ petition, Sri G.S.J.Atchuta Rao, General Secretary of the appellant filed counter affidavit. He averred that in the biennial conference of the union, the deponent and Ch.Balaraju were nominated, but non-petitioner No.2 did not notify the constitution of Joint Consultative Machinery Level Committee. He further averred that Sri B. Anjaneyulu, who has filed the writ petition by claiming himself to be Joint Secretary of the petitioner union was not elected in the biennial elections held on 21-2-2006 and he does not have the locus to file the writ

petition.

The main ground on which the appellant has questioned the correctness of the interim order passed by the learned Single Judge is that while issuing a mandatory interim direction, the learned Single Judge overlooked the fact that the Deputy Commissioner of Labour does not have any jurisdiction to decide the dispute between rival unions. Another contention of the appellant is that the order passed by the learned Single Judge has the effect of virtually allowing the writ petition and this could not have been done without giving the parties an opportunity to represent their cause.

At this stage, it is apposite to mention that after seeking adjournment on 27-10-2006, counsel for respondent Nos.2 and 3 has filed affidavit dated 9-11-2006 of Commodore Turumulla Sudhakar. Paragraphs 2 to 7 of that affidavit read as under:

> "2. I submit that Naval Civilian Employees Union (hereinafter referred as 'NCE Union') is registered under the Trade Unions Act, bearing Registration No.D/1926/2002. Subsequently, it has been recognized by the Government of India, Ministry of Defence, on 11-3-2005. I further submit that Joint Consultative Machinery (hereinafter referred as 'JCM') has been formed by the Government of India, with the objective of promoting harmonious relation and securing maximum amount of cooperation from the employees to achieve greater efficiency.
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> 3. I submit that JCM IV Level Council has been functioning in the Eastern Naval Command. There are six members from the official side and eight members from the staff side. The six seats of staff side have been distributed to four recognized unions and balance two seats have been allotted to the Works Committees. The

NCE Union is represented with two of its representatives in the JCM IV Level Council. The said Union conducted their biennial conference on 21-2-2006. The conference was neither attended nor witnessed by these respondents.

4. I submit that one group of NCE Union represented by Shri B. Anjaneyulu and another group represented by Shri G.S.J.Atchuta Rao have submitted to these respondents claiming that they are the representatives of NCE Union. Therefore, the matter was referred to the Deputy Commissioner of Labour (hereinafter referred as 'DCL'), Visakhapatnam, since he is the Registrar of the Trade Unions in the region to decide as to which group is to be recognized.

5. I submit that the DCL vide his letter Rc.No.C-1260/2006, dt.14th June, 2006, intimated to the 2nd respondent herein that he is not the proper authority to decide the matter and as it is a civil dispute it would be decided in O.S.No.768/2006 pending before the II Addl. Junior Civil Judge, Visakhapatnam. However, the DCL recommended for continuing to recognize the earlier Working President and General Secretary i.e. Shri J.Chiranjeevi Rao and Shri B. Anjaneyulu to represent the grievance of the workers till the finalization of the suit.

6. I submit that these respondents did not act upon the recommendations of DCL, as he has no jurisdiction to decide the matter. These respondents have taken decision not to call either of the groups for the JCM meetings and other meetings till the finalization of the civil suit, O.S.No.768/2006. But, only in compliance of the interim orders dated 13-6-2006 passed by the Hon'ble High Court of Andhra Pradesh in WPMP.No.23834/2006 in W.P.No.18957/2006, these respondents communicated to Shri B. Anjaneyulu to represent the union in the JCM IV Level Council scheduled on 21-9-2006.

7. These respondents submit that there are three recognized unions and six recognised Associations functioning in the Eastern Naval Command to bring the

grievances of the employees. The respondents further submit that pending the finalization of civil suit No.768/2006, neither of the groups claiming representatives of the said union to be called in the JCM meeting. On this point of view, it is humbly submitted that Hon'ble Court may vacate the interim stay order."

Sri G. Vidyasagar, learned counsel for respondent No.1 relied on Section 28 of the Trade Unions Act, 1926 (for short, 'the Act') and argued that respondent Nos.1 and 2 cannot refrain from inviting representatives of the union in the meeting of the Joint Consultative Machinery and the order passed by the learned Single Judge to respondent Nos.1 and 2 to act as per the directions of the Deputy Commissioner of Labour does not suffer from any legal infirmity.

On the other hand, Sri A.K. Jayaprakash Rao, counsel for the appellant argued that the Deputy Commissioner of Labour does not have any role in the matter of election and recognition of the unions and their representatives and, therefore, the learned Single Judge was not justified in issuing an interim mandamus to respondent Nos.1 and 2 to take steps in terms of the direction given by the Deputy Commissioner of Labour.

We have considered the respective submissions and are convinced that the learned Single Judge committed an error by issuing interlocutory mandatory direction to respondent Nos.2 and 3 to take action in terms of proceedings dated 14-6-2006 recorded by the Deputy Commissioner of Labour, Visakhapatnam. In the affidavit filed by Commodore Turumulla Sudhakar, it has been categorically averred that the Deputy Commissioner does not have

any role in the matter of recognition of persons who are required to be called in the meeting of the Joint Consultative Machinery. Learned counsel for respondent No.1 could not draw our attention to any provision of the Act or any other law under which the Deputy Commissioner is invested with the power to decide the dispute between the two unions. As a matter of fact, the concerned Deputy Commissioner was himself not sure of his power to decide the dispute. This is very much evident from the contents of letter dated 14-6-2006 sent by him to respondent No.3. Therefore, the direction given by the learned Single Judge is legally unsustainable and is liable to be set aside because the same is bound to prejudice the cause of the appellant.

In the result, the appeal is allowed and the order of the learned Single Judge is set aside. However, looking to the nature of the case, we direct that the main writ petition be listed for final hearing before an appropriate Bench on 7-12-2006.

G.S.SINGHVI, C.J.

20th November, 2006.

C.V. NAGARJUNA REDDY, J.

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